

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHELLEY R. ROBINSON; and ELIZAVETA)
M. HUNSINGER, by and through her)
Conservator IVAN J. HUNSINGER,)
Plaintiffs,)
v.)
DAIMLERCHRYSLER AG; DAIMLERCHRYSLER)
MOTORS COMPANY LLC; DAIMLERCHRYSLER)
CORPORATION; and DOES ONE through)
FIFTY, inclusive,)
Defendants.)
No. 07-3258 SC
ORDER GRANTING
DEFENDANT DAIMLER
AG'S MOTION TO
DISMISS FOR LACK OF
PERSONAL JURISDICTION

I. INTRODUCTION

Defendant Daimler AG ("Daimler") brings this Renewed Motion to Dismiss for Lack of Personal Jurisdiction under Federal Rule of Civil Procedure 12(b)(2). See Docket No. 31.¹ Plaintiffs Shelley Robinson and Elizaveta Hunsinger ("Plaintiffs") opposed the motion, and Daimler replied. See Docket Nos. 36, 37. Having reviewed all of the parties' submissions, the Court hereby GRANTS Daimler's motion for the reasons set forth below.

¹Daimler labels itself a "specially appearing defendant" in order to avoid waiving its jurisdictional challenge by making an appearance. "Rule 12 of the Federal Rules of Civil Procedure has abolished the formal distinction between general and special appearances." Wright v. Yackley, 459 F.2d 287, 291 (9th Cir. 1972). Daimler timely challenged the Court's jurisdiction pursuant to Rule 12(b)(2) and therefore has not waived its right to object.

1 **II. BACKGROUND**

2 **A. The Accident**

3 Plaintiffs allege that the 1998 Jeep Cherokee ("the
4 Cherokee") in which they were traveling lost control and rolled
5 over on a road in Idaho on May 25, 2005. See Notice of Removal,
6 Docket No. 1, Ex. B ("Complaint") ¶ 8. Plaintiffs allege that
7 certain components of the Cherokee, including the roof, roof
8 supports, and restraints, failed during this accident as a result
9 of flaws in their design and manufacture. Id. ¶¶ 10, 11, 17, 18.
10 This failure allegedly resulted in severe and catastrophic
11 injuries to Plaintiffs. See, e.g., id. ¶¶ 12, 19. Plaintiffs
12 brought this suit against DaimlerChrysler AG, DaimlerChrysler
13 Motors Company LLC, and DaimlerChrysler Corporation, alleging
14 causes of action for negligence, strict liability, and breach of
15 warranty. See id. Plaintiffs filed the suit in the Contra Costa
16 County Superior Court on May 9, 2007, and Defendants removed it to
17 this Court on June 20, 2007. See Notice of Removal; Compl.

18 **B. Defendants' Corporate History and Structure**

19 Chrysler Corporation was incorporated in Delaware in 1986,
20 and was responsible for the design, development, and assembly of
21 Chrysler, Dodge, and Jeep vehicles.² Chrysler Corporation had its
22 principal place of business in Michigan.

23 Chrysler Motors Corporation was incorporated in Delaware in
24 1998, and was responsible for the sale of Chrysler, Dodge, and

26 ²The details of the Defendants' corporate history and
27 structure are taken from the Declaration of Louann Van Der Wiele
and the Declaration of Paul Hecht. Docket Nos. 26, 12.

1 Jeep vehicles to authorized dealers. Chrysler Motors Corporation
2 was a wholly owned subsidiary of Chrysler Corporation.

3 DaimlerChrysler AG was incorporated under the laws of the
4 Federal Republic of Germany in May 1998, and has its principal
5 place of business in Stuttgart, Germany.³ DaimlerChrysler AG
6 designed and manufactured Mercedes-Benz vehicles in Germany.

7 In May of 1998, Chrysler Corporation entered into a Business
8 Combination Agreement ("BCA") with Daimler-Benz AG and
9 DaimlerChrysler AG, which became effective on November 12, 1998.
10 Pursuant to the BCA, Daimler-Benz AG merged into DaimlerChrysler
11 AG, and Chrysler Corporation became a wholly owned subsidiary of
12 DaimlerChrysler AG.

13 In November 1998, upon execution of the BCA, Chrysler
14 Corporation renamed itself DaimlerChrysler Corporation, and
15 Chrysler Motors Corporation renamed itself DaimlerChrysler Motors
16 Corporation.

17 In January 2000, DaimlerChrysler Corporation became a wholly
18 owned subsidiary of DaimlerChrysler North America Holding
19 Corporation, which was itself a wholly owned subisidiary of
20 DaimlerChrysler AG.

21 In 2001, DaimlerChrysler Motors Company LLC ("DC Motors") was
22 formed in Delaware. In January 2002, DaimlerChrysler Motors
23 Corporation merged into DC Motors. At this point, DC Motors

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25 ³"AG" is the standard abbreviation for "Aktiengesellschaft,"
26 which is a German stock company, comparable to a shareholder-owned
27 company in the United States. The details of this designation, and
 the differences between an AG and an American corporation, if any,
 are not material to this order.

1 assumed the responsibility for sales and distribution of Chrysler,
2 Dodge, and Jeep vehicles to authorized dealers. At the same time,
3 DC Motors became a wholly owned subsidiary of DaimlerChrysler
4 North America Holding Corporation, and DaimlerChrysler Corporation
5 became a wholly owned subsidiary of DC Motors.

6 DaimlerChrysler Corporation was responsible for making recall
7 decisions affecting Chrysler, Dodge, and Jeep vehicles.

8 In March of 2007, the relationship between the German and
9 American automakers ended and DaimlerChrysler AG sold the majority
10 of its interest in DaimlerChrysler Corporation. DaimlerChrysler
11 Corporation was converted to a Delaware limited liability company
12 and renamed DaimlerChrysler Company LLC. Two months later, DC
13 Motors became a wholly owned subsidiary of DaimlerChrysler Company
14 LLC. In July 2007, DaimlerChrysler Company LLC was renamed
15 Chrysler Motors LLC. Chrysler Motors LLC is a wholly owned
16 subsidiary of Chrysler Holding LLC, in which DaimlerChrysler AG
17 retained a 19.9% interest. The remainder was held by a private
18 investment firm.

19 In October 2007, DaimlerChrysler AG renamed itself Daimler
20 AG, the "Daimler" entity that brought the instant motion.

21 Daimler did not design, manufacture, or sell the Cherokee.
22 Daimler does not conduct any business or maintain any offices in
23 California. Daimler has not appointed an agent for service of
24 process in California. Although Daimler currently manufactures
25 Mercedes-Benz automobiles in Germany, it does not sell them
26 anywhere in the United States, nor has it done so at any time
27 relevant to this suit. Mercedes-Benz USA LLC, a Delaware limited
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1 liability company with its principal place of business in New
2 Jersey, has the rights to import, advertise, and distribute
3 Mercedes-Benz vehicles and parts within the United States, but it
4 purchases the vehicles and attains title to them in Germany.

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6 **III. LEGAL STANDARD**

7 "When a defendant challenges the sufficiency of personal
8 jurisdiction, the plaintiff bears the burden of establishing
9 personal jurisdiction over the defendant." Sinatra v. Nat'l
10 Enquirer, Inc., 854 F.2d 1191, 1194 (9th Cir. 1988). "Where, as
11 here, the motion is based on written materials rather than an
12 evidentiary hearing, the plaintiff need only make a *prima facie*
13 showing of jurisdictional facts. In such cases, we only inquire
14 into whether [the plaintiff's] pleadings and affidavits make a
15 *prima facie* showing of personal jurisdiction." Schwarzenegger v.
16 Fred Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004).

17 Because there is no federal statute governing personal
18 jurisdiction in this matter, the Court applies California law.
19 See id. (citing Fed. R. Civ. P. 4(k)(1)(A); Panavision Int'l, L.P.
20 v. Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998)). "California's
21 long-arm statute permits a court to exercise personal jurisdiction
22 over a defendant to the extent permitted by the Due Process Clause
23 of the Constitution." Panavision, 141 F.3d at 1320 (citing Cal.
24 Code Civ. P. § 410.10). "For a court to exercise personal
25 jurisdiction over a nonresident defendant, that defendant must
26 have at least 'minimum contacts' with the relevant forum such that
27 the exercise of jurisdiction 'does not offend traditional notions'

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1 of fair play and substantial justice.'" "Schwarzenegger, 374 F.3d
2 at 801 (quoting Int'l Shoe Co. v. Wash., 326 U.S. 310, 316
3 (1945)).

4 Personal jurisdiction may be either general or specific.
5 Panavision, 141 F.3d at 1320. "General jurisdiction exists when a
6 defendant is domiciled in the forum state or his activities there
7 are 'substantial' or 'continuous and systematic.'" Id. (quoting
8 Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408,
9 414-16 (1984)). The Ninth Circuit uses a three-part test to
10 determine whether there is specific jurisdiction:

- 11 (1) The non-resident defendant must
12 purposefully direct his activities or
13 consummate some transaction with the forum or
14 resident thereof; or perform some act by which
15 he purposefully avails himself of the
privilege of conducting activities in the
forum, thereby invoking the benefits and
protections of its laws;
- 16 (2) the claim must be one which arises out of
or relates to the defendant's forum-related
activities; and
- 17 (3) the exercise of jurisdiction must comport
with fair play and substantial justice, i.e.
it must be reasonable.

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20 Yahoo!, Inc. v. La Ligue Contre Le Racisme, 433 F.3d 1199, 1205-06
21 (9th Cir. 2006).

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23 **IV. DISCUSSION**

24 There is no basis for the Court to exercise jurisdiction over
25 Daimler in this matter. In opposing the Motion, Plaintiffs do not
26 even suggest that general jurisdiction exists. See Opp'n at 5-6.
27 Rather, Plaintiffs' sole contention is that the Court has personal
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1 jurisdiction over Daimler because it has jurisdiction over DC
2 Motors and DaimlerChrysler Corporation, which Plaintiffs claim
3 were Daimler's agents. See id. "In determining the sufficiency
4 of a defendant's contacts, it is not only defendant's activities
5 in the forum, but also actions relevant to the transaction by an
6 agent on defendant's behalf, which support personal jurisdiction."
7 Theo H. Davies & Co v. Republic of the Marshall Islands, 174 F.3d
8 969, 974 (9th Cir. 1999).

9 The agency test is satisfied by a showing that
10 the subsidiary functions as the parent
11 corporation's representative in that it
12 performs services that are sufficiently
13 important to the foreign corporation that if
it did not have a representative to perform
them, the corporation's own officials would
undertake to perform substantially similar
services.

14 Doe v. Unocal Corp., 248 F.3d 915, 928 (9th Cir. 2001) (internal
15 quotation marks omitted).

16 Plaintiffs argue that "DaimlerChrysler Corporation and [DC
17 Motors] were engaged in activities that, but for their existence,
18 [Daimler] would have had to undertake itself." Opp'n at 5.
19 Plaintiffs offer no declarations, affidavits, or other evidence
20 for this assertion. The only basis they provide for the agency
21 argument is Tracinda Corp. v. DaimlerChrysler AG, 364 F. Supp. 2d
22 362 (D. Del. 2005). Plaintiffs' reliance on Tracinda is misplaced
23 for a number of reasons. First, while Judge Farnan's opinion in
24 that case is extraordinarily thorough in its discussion of the BCA
25 and the corporate structure of DaimlerChrysler following the
merger, it is based on a well-developed factual record that is not
before this Court. The Court cannot simply adopt those findings

1 en masse.

2 Second, even if the Court did adopt those findings, they
3 would be inadequate to support Plaintiffs' agency claim here.
4 Tracinda was a securities fraud suit, arising out of pre-merger
5 statements made by executives from Chrysler Corporation and
6 Daimler-Benz AG that the combination was to be a "merger of
7 equals." See id. at 378-80.⁴ The plaintiffs there were investors
8 who claimed that despite these statements, it was more accurately
9 an acquisition, with Daimler retaining managing control of the
10 entire corporate entity. Even if the Court accepts that Chrysler
11 Corporation (subsequently DaimlerChrysler Corporation, now
12 effectively Chrysler LLC) was fully absorbed into Daimler, and
13 assumes, without evidentiary support, that the companies did not
14 observe the corporate formalities necessary to protect Daimler in
15 a case such as this, the Tracinda order does not address the roles
16 of the various subsidiaries at issue here. There is no mention of
17 Chrysler Motors Corporation, DaimlerChrysler Motors Corporation,
18 DaimlerChrysler North America Holding Corporation, or DC Motors.
19 Nothing in Tracinda can shed any light on the issue here, which is
20 whether Daimler AG, or its predecessor DaimlerChrysler AG, can be
21 held accountable for the decision not to recall the Cherokee.

22 Finally, even if the findings in Tracinda did support
23 Plaintiffs' claim that DC Motors was Daimler's agent, it would not
24 preclude the Court from considering the affidavits Daimler offers

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26 ⁴The Court provides only the most cursory summary of the
27 Tracinda facts and holdings. However, the Court has thoroughly
reviewed that case and is firm in the conclusion that the holdings
there have no bearing in this matter.

1 in this matter. Jurisdiction was not an issue in that case
2 because the suit arose out of transactions that took place in
3 Delaware, the defendants conducted business in Delaware, and the
4 shareholder agreement in question contained a forum selection
5 clause under which the parties had submitted to the jurisdiction
6 of the Delaware courts. Id. at 365. As such, the various Daimler
7 entities involved in that suit had no reason to present evidence
8 that might acquit them of the court's jurisdiction. None of the
9 foregoing is true here. Daimler does not do business in
10 California and has not submitted to the Court's jurisdiction. It
11 is therefore entitled to present evidence contesting jurisdiction
12 without concern that the unrelated holding in Tracinda will
13 preclude that argument.

14 The evidence Daimler presented supports its argument that DC
15 Motors and DaimlerChrysler Corporation were not Daimler's agents.
16 DC Motors and its predecessor, Chrysler Motors Corporation, were
17 responsible for sales of Jeep vehicles, such as the Cherokee, to
18 authorized dealers. Van Der Wiele Decl. ¶¶ 5, 8, 11.
19 DaimlerChrysler Corporation and its predecessor, Chrysler
20 Corporation, were responsible for the design, development, and
21 manufacture of the Cherokee, as well as for decisions regarding
22 recalls to Jeep vehicles. Id. ¶¶ 4, 8, 13. These are not tasks
23 which, but for the existence of these subsidiaries, Daimler would
24 have had to do itself. See Doe, 248 F.3d at 928. Daimler designs
25 and manufactures Mercedes-Benz automobiles in Germany. It existed
26 (as Daimler-Benz AG) prior to entering the BCA without needing a
27 presence in California for the design, development, manufacture,
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1 sales, or recall of Jeep vehicles. Since divesting its majority
2 interest in DaimlerChrysler Corporation, Daimler has not engaged a
3 new subsidiary in those tasks or undertaken to perform those tasks
4 on its own. In short, the design, development, manufacture,
5 sales, and recall of Jeep vehicles are not tasks which are
6 fundamental to Daimler's business. Therefore, the subsidiaries
7 performing those tasks cannot be considered Daimler's agents for
8 the purposes of establishing personal jurisdiction.

9 The available authority also supports this conclusion. Where
10 the subsidiary maintains the "primary and exclusive responsibility
11 for the distribution, marketing, and sale" of the vehicle, it is
12 not an agent of the parent company for jurisdictional purposes.
13 Kramer Motors, Inc. v. British Leyland, Ltd., 628 F.2d 1175, 1177
14 (9th Cir. 1980). In Kramer Motors, the president of the U.S.
15 subsidiary sat on the British parent company's board of directors,
16 the British parent reviewed and approved general policy decisions
17 of the U.S. subsidiary, and the parent had "general executive
18 responsibility for the operation" of the subsidiary, but the court
19 still found that the subsidiary was not an agent for the purposes
20 of establishing jurisdiction. Id. The level of control
21 Plaintiffs assert that Daimler had over DC Motors is comparable to
22 that rejected in Kramer Motors. See Opp'n at 6.

23 Other plaintiffs who have attempted to bring Daimler or its
24 predecessor into court by asserting agency jurisdiction have been
25 unsuccessful for a number of reasons. Daimler's evidence that it
26 has used alternate means of distributing its products was
27 sufficient to defeat agency jurisdiction in one case. Bauman v.

1 DaimlerChrysler AG, No. C-04-00194 RMW, 2007 U.S. Dist. LEXIS
2 13116, at * 8-9 (N.D. Cal. Feb. 12, 2007); see Hecht Decl. ¶ 11
3 (Daimler has a variety of distribution channels for the Mercedes-
4 Benz products it manufactures). In another, the court found that
5 there was no agency because there was no evidence that absent the
6 subsidiary, Daimler would start manufacturing and selling the
7 vehicles the subsidiary manufactured and sold. Cai v.
8 DaimlerChrysler AG, 480 F. Supp. 2d 1245, 1252 (D. Or. 2007).
9 Plaintiffs do not allege that Daimler has begun the manufacture
10 and sale of Chrysler, Dodge, and Jeep vehicles in California since
11 divesting its interest in Chrysler.

Finally, the Court agrees with Daimler that, even if Plaintiffs had adequately shown a basis for jurisdiction, it would be unreasonable to require Daimler to defend itself in a lawsuit in California. Daimler structured its business to avoid this sort of liability. Plaintiffs do not provide any evidence that Defendants failed to observe corporate formalities. Nor do they offer any authority suggesting that the corporate structure in question was improper. Daimler could reasonably expect that it would not have to appear in litigation in California. See, e.g., World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980) ("The Due Process Clause, by ensuring the orderly administration of the laws, gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.") (internal quotation marks and citation omitted). Requiring Daimler to appear would be

1 unreasonable. That Daimler resides in another country, rather
2 than merely in another forum within the United States, makes this
3 conclusion even more compelling. See, e.g., Sinatra, 854 F.3d at
4 1199 ("litigation against an alien defendant creates a higher
5 jurisdictional barrier than litigation against a citizen from a
6 sister state because important sovereignty concerns exist").
7

8 **V. DISCOVERY**

9 Plaintiffs request that, if the Court finds they have not
10 established a prima facie case for jurisdiction over Daimler, they
11 be allowed to conduct limited discovery on jurisdictional issues.
12 The Court has broad discretion in considering whether or not to
13 allow jurisdictional discovery. See Butcher's Union Local No 498
14 v. SDC Inv., Inc., 788 F.2d 535, 540 (9th Cir. 1986). The Court's
15 conclusion regarding jurisdiction was not based on a failure to
16 prove the facts alleged, but the failure to even allege the
17 necessary facts. Discovery will not cure this. Further,
18 Plaintiffs have not identified what discovery they would seek or
19 how that discovery would assist in resolving the dispute over
20 jurisdiction, particularly in light of the Van Der Wiele and Hecht
21 Declarations. See Terracom v. Valley Nat'l Bank, 59 F.3d 555, 562
22 (9th Cir. 1995). The Court therefore denies Plaintiffs' request
23 for additional discovery.

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25 **VI. CONCLUSION**

26 For the reasons set forth above, the Court concludes that it
27 does not have jurisdiction over Daimler, and therefore GRANTS
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1 Daimler's Motion to Dismiss. The Court DENIES Plaintiffs' request
2 for limited jurisdictional discovery.

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4 IT IS SO ORDERED.

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6 March 17, 2008

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8 _____
9 UNITED STATES DISTRICT JUDGE